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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,233	08/01/2001	Christian Knopfle	60,500-072	6017

27305 7590 06/18/2003

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EXAMINER

PHILOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 06/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/921,233

Applicant(s)

KNOPFLE ET AL.

Examiner

Pedro Philogene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-12 and 28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-12 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,6,8,9,28 are rejected under 35 U.S.C. 102(e) as being anticipated by Wellisz et al (6,302,884).

With respect to claims 1, 2,6,28 Wellisz et al disclose a self-retaining implant for attaching a bone cover or a bone fragment, the implant (10, 200,310) comprising a support element (320) having an upper side and a lower side, the lower side for facing a surface of the bone cover or the bone fragment; as best seen in FIG.21, 27; and an extension (220a, 380) extending from the lower side of the support element and supporting therefrom at least one spike (322) toward the bone cover or bone fragment and has a substantially triangular form such that the spike can be driven laterally into the bone cover or bone fragment; as best seen in Fig.21,27.

It is noted that the spike of Wellisz et al did not extend substantially parallel to the support element, as claimed by applicant. However, Wellisz et al teach of a spike forming an angle of 45 degrees instead of an angle of 90 degrees to make the support and the spike parallel; as claimed by applicant. But, it would have been obvious to one having ordinary skill in the art at the time the invention was made to reach the 90 degrees angle, since it has been held that where the general conditions of a claim are

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disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, USPQ 233; or discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 8, Wellisz et al. disclose an implant wherein the spike comprises sharpened edges; as set forth in column 5, lines 1-38.

With respect to claim 9, Wellisz et al disclose an implant wherein the support element defines a screw hole (340) therethrough.

Claims 3,4,5,12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wellisz et al. (6,302,884) in view of Hair (6,197,037).

With respect to claims 3,12, it is noted that Wellisz et al did not teach of a support having two support arms extending in opposite directions from the extension forming a T-shape with the extension; as claimed by applicant. However, in a similar art, Hair evidences the use of a support element having two support arms for joining adjacent bone portions.

Therefore, given the teaching of Hair, it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the one arm of the device of Wellisz et al with the two support arms of Hair for joining adjacent bone portions.

With respect to claims 4,5 Hair discloses all the limitations; as best seen in FIGS 3,4.

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Claims 10, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wellisz et al. (6,302,884) in view of Pohndorf et al. (5,904,683).

With respect to claim 10, it is noted that Wellisz et al. did not teach of a support element having a thickness increasing in the direction of the screw hole; as claimed by applicant. However, Pohndorf et al. evidence the use of a support element having a thickness increasing in the direction of the screw hole to strengthen the support element for receiving a screw and stabilize a bone.

Therefore, given the teaching of Pohndorf et al. it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the increasing thickness of Pohndorf et al in the support element of Wellisz et al to strengthen the support element for receiving a screw and stabilize a bone.

With respect to claim 11, Pohndorf et al teach a screw hole that is spherically curved, as best seen in FIG.11.

Response to Amendment

Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (703)

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308-2252. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P Shaver can be reached on (703) 308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 305-3591 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Pedro Philogene
June 13, 2003


PEDRO PHILOGENE
PRIMARY EXAMINER